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Human Rights Committee

Concluding observations on the third periodic report of Lithuania

Addendum

Information received from Lithuania on follow-up to the concluding observations*

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* The present document is being issued without formal editing.

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1. The Republic of Lithuania is pleased to provide additional information to the United Nations Human Rights Committee as requested in the letter of Ms. Sarah Cleveland, Special Rapporteur for Follow-up to Concluding Observations, dated 1 October 2015.

Paragraph 8 (a) [C2]: The State party has not provided concrete information on any specific measures taken to ensure that national legislation is not interpreted and applied in a discriminatory manner against persons on the basis of their sexual orientation or gender identity. The Committee reiterates its request and requires examples of the application of national legislation on cases of discrimination based on sexual orientation or gender identity.

Information on national legislation implementing non-discrimination principle on sexual orientation and gender identity grounds in Lithuania

2. The Constitution of the Republic of Lithuania as well as other legislation is in compliance with the provisions of European Union law and international treaties that have been ratified by Lithuania which deals with the principle of non-discrimination. There are two special laws regarding non-discrimination in Lithuania — Law on Equal Opportunities and Law on Equal Opportunities of Women and Men. The Law on Equal Opportunities implements the provisions of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. Moreover, Labour Code of the Republic of Lithuania implements Council Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation.

3. Article 4 of the Council Directive 2006/54/EC stipulates, that for the same work or for work to which equal value is attributed, direct and indirect discrimination on grounds of sex with regard to all aspects and conditions of remuneration shall be eliminated. According to this provision, we consider that the principle of non-discrimination on gender grounds means the prohibition of discrimination of all forms based on gender grounds, including gender identity. Therefore, there is no need to mention separately non-discrimination of transgender people in the Labour Code of the Republic of Lithuania.

4. European Parliament and the Council Directive 2012/29/EU on establishing minimum standards on the rights, support and protection of victims of crime is not related to the provisions of the Labour Code of the Republic of Lithuania. However the Directive is essential, as it states that violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately, is understood as gender-based violence and ensures that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

5. It is worth to mention that Lithuanian law provides broader list of prohibited grounds of discrimination, including such grounds as nationality, language, origin, social status, religion, and affiliation.

6. On 7th June, 2013, Lithuania has signed Council of Europe Convention on preventing and combating violence against women and domestic violence. Currently a special working group, established by the Minister of Social Security and Labour, is analysing ratification possibilities of the Convention.

7. On 28th January, 2015, The Government of the Republic of Lithuania approved an Inter-institutional action plan for promoting non-discrimination. The three-year plan, drafted and presented by the Ministry of Social Security and Labour, provides for reducing discrimination, ensuring equal opportunities, raising awareness and promoting respect. The document stipulates the organisation of annual equality and diversity awards, seminars,

information campaigns and other educational events aimed at promoting non-discrimination on the basis of gender, ethnicity, race, language and other grounds.

8. The plan will be implemented by the Ministry of Social Security and Labour, the Ministry of Education and Science, the Ministry of Culture, the Ministry of Justice, the Ministry of Foreign Affairs as well as other institutions. Over EUR 1.4 million will be allocated from the state budget for the implementation of the plan in 2015-2017, and additional EUR 724,000 will be received from EU funds.

9. National Equality and Diversity Awards are organized since 2014 in order to implement Inter-institutional action plan promoting non-discrimination. This annual ceremony is dedicated to those people or initiatives that promotes equal opportunities and non-discrimination. There are six nominations: Dialogue of the Year; Journalist of the Year; Human Rights Lawyer of the Year; Photograph of the Year; Overcome Obstacle Award; Rainbow Award (concerning awareness-raising campaign for LGBT). This ceremony is one of essential measures of awareness raising aimed at reducing discrimination and fostering respect for human rights.

10. The Office of the Equal Opportunities Ombudsperson while implementing the Plan for promoting non-discrimination is planning to carry out a research on the situation of transgender people in Lithuanian society and protection of their private life. We hope that this research will deliver essential information which will contribute to the greater visibility of the situation of transgender people in Lithuania.

Information provided by the Office of the Equal Opportunities Ombudsperson

11. The Law on Equal Treatment of the Republic of Lithuania prohibits discrimination based on sexual orientation in employment sphere (in labour relations and public service), in the sphere of protection of consumer rights, higher education and research; discrimination based on sexual orientation is also prohibited in the sphere of membership and participation in organisations.

12. Article 5 of the Law on Equal Treatment of the Republic of Lithuania establishes that the state and municipal institutions and agencies must implement equal opportunities regardless of sexual orientation.

13. Prohibition of discrimination based on gender identity is entrenched neither in the Law on Equal Opportunities for Men and Women nor in the Law on Equal Treatment, implementation of which is supervised by the Equal Opportunities Ombudsperson.

14. It should be noted that despite the protection against potential discrimination based on sexual orientation entrenched in the national law and therefore the possibility to defend one's rights, the Office of the Equal Opportunities Ombudsman receives relatively a low number of complaints concerning discrimination based on sexual orientation. In 2013, no complaints concerning discrimination based on sexual orientation were received, in 2014 there were four complaints, and in 2015 there were four complaints and one investigation was carried out concerning discrimination based on sexual orientation on the initiative of the Equal Opportunities Ombudsperson.

15. After the investigation concerning discrimination based on sexual orientation had been carried out, appropriate decisions were made.

16. In 2014, out of four complaints two were recognized as justifiable and a decision was taken to contact the person or institution involved suggesting them to discontinue violations of equal opportunities, to amend or repeal certain legal act; in the case of one complaint a decision was taken to terminate the investigation due to the lack of objective information about the infringement and in the case of another complaint a decision was taken to terminate the investigation due to the fact that the investigation of the

circumstances specified in the complaint did not fall within the area of competence of the Equal Opportunities Ombudsperson.

17. In 2015, one complaint and the investigation initiated by the Equal Opportunities Ombudsperson were referred to the pre-trial investigation institution or a prosecutor, because of the presence of elements of the criminal act; in the case of one complaint a decision was taken to terminate the investigation due to the lack of objective information about the infringement; in the case of another complaint, a decision was taken to give a warning to the person who had breached the Law on Equal Treatment; investigation of yet another complaint was terminated due to the fact that the investigation of the circumstances specified in the complaint did not fall within the area of competence of the Equal Opportunities Ombudsperson.

18. It should be noted that the investigation of complaints by the Office of the Equal Opportunities Ombudsperson is carried out according to the principles of lawfulness, impartiality and fairness entrenched in Article 12(2) of the Law on Equal Treatment.

Information provided by the Office of the Inspector of Journalist Ethics

19. Please find below the information about the activities of the Inspector of Journalist Ethics concerning (1) the application of the Law on the Protection of Minors Against the Detrimental Effect of Public Information (hereinafter – Law) mentioned in the recommendations of the Committee; (2) manifestations of hatred (negative public attitude) towards the persons on the basis of their sexual orientation; and (3) training for media representatives.

20. With regard to the Law on the Protection of Minors Against the Detrimental Effect of Public Information, it is necessary to emphasize that the Law considers as detrimental to minors not the public information in which the diversity or relationship of sexual minorities is depicted, but rather the one which *encourages the notion of entry into a marriage and creation of a family other than stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania*. Therefore, according to the Law, it is not the depiction of gender diversity that has detrimental effect on minors and is therefore restricted (not prohibited), but rather *encouraging of family relationship between people of the same sex*.

21. Within the framework of the above provisions of the Law, the Inspector of Journalist Ethics has assessed (1) the information disseminated in the fairy-tale book *Gintarinė širdis* (*eng. Amber Heart*) (Publishing House of the Lithuanian University of Educational Sciences: Vilnius, 2013); and (2) the information that was planned to be disseminated and subsequently was disseminated in the social advertising in 2013-2014 by the Lithuanian Gay League. Although in these cases the Inspector only provided the conclusion of the expert group which assessed the effect of public information according to the criteria stipulated in the Law and did not take any binding or discriminatory actions, such function of the Inspector carried out according to the Law received inadequate response — a complaint was filed with the Equal Opportunities Ombudsperson against the actions of the Inspector as they were treated as discriminatory. The Ombudsperson however terminated the investigation due to the lack of objective information.

22. The contents of the fairy-tale book *Gintarinė širdis* was assessed after the publication of the book, when the Ministry of Culture, which received citizens' complaints, approached the Inspector for his conclusions. After the assessment, it was concluded that the information published in the fairy-tale book (in two fairy tales) was harmful to minors under 14 years of age and therefore the publisher was under the obligation of marking the book with the corresponding recommended age index (N-14). However, the dissemination of the book was terminated on the initiative of the publisher (the Lithuanian University of

Educational Sciences) and the remaining unsold books were returned to the publishing house. As a result, the author made a claim against the publishing house. It should be noted that by its ruling dated 16 April 2015 the court of first instance (District Court of Vilnius City) dismissed the author's claim regarding cessation of discriminatory practices and ordering further dissemination of the publication as unfounded, because it did not establish discrimination in the publisher's actions. Currently, the dispute is being resolved at Vilnius Regional Court (the court plans to examine the civil case by way of written procedure on 2 January 2016). It should be noted that, without waiting for the court's ruling, the book *Gintarinė širdis* was in late 2014 re-published at the expense of non-governmental organisations and returned into circulation (the libraries in Lithuania received copies of the book without the corresponding recommended age index).

23. Other investigated cases were related to the social advertising clips created on order of the Lithuanian Gay League (hereinafter – LGL). In 2013, the national broadcaster refused to broadcast the clips and in 2014 commercial broadcasters as well. In both cases a dispute arose, therefore the Inspector of Journalist Ethics and the expert group of the Office of the Inspector of Journalist Ethics, which provides conclusions regarding the effect of public information on minors, assessed the information to be disseminated in the video clips.

24. In the first case, after the examination of the LGL complaint concerning the actions of the public broadcaster, the Inspector in its decision of 23 September 2013 recognized the complaint as unfounded. The Inspector noted that the broadcaster did not violate the main principles of provision of information to the public as (1) it was not obliged to broadcast the advertising clips under the conditions requested by the LGL; (2) it reasonably refused to broadcast one of the video clips in the day time to comply with the objectives of the protection of minors; and (3) it determined stricter time limits for broadcasting of the other video clip to comply with the requirements of the Law.

25. In the second case, the LGL requested the Inspector to assess the information to be disseminated and to provide his conclusion. In his conclusion dated 24 September 2014, the Inspector established that the information provided in the social video clip was classified as the information which had a detrimental effect. Although the conclusion was just a recommendation, the LGL filed an appeal against it with Vilnius Regional Administrative Court. In its ruling of 24 October 2014, the court refused to examine the LGL appeal stating that the conclusion provided at the LGL request by the Inspector was only a recommendation — the document did not establish any rights and obligations for either the LGL or the disseminator of public information, neither there were any legal consequences for failure to observe the recommendations set out in the conclusion.

26. It should be noted that in the above cases, restrictions and recommendations — as far as they were related to the activities of the Inspector of Journalist Ethics aimed at the objectives of the protection of minors entrenched in the Law — fully complied with the following criteria regarding the restriction of the freedom of expression: (1) *lawfulness* (which means that restrictions of the exercise of the freedom of expression must be established by law); (2) *necessity* (which means that restrictions of the exercise of the freedom of expression must be necessary in the democratic society in pursuing the objectives entrenched in the Law); (3) *proportionality* (which means that restrictions of the exercise of the freedom of expression must be proportionate to the aim for the sake of which the exercise of the freedom is restricted).

27. The Law restricts public information, which *encourages the notion of entry into a marriage and creation of a family other than stipulated in the Constitution of the Republic of Lithuania and the Civil Code of the Republic of Lithuania.* The Inspector has been applying this provision by taking into account all the above criteria regarding the restriction of the freedom of expression. It is extremely important that the application of the Law by

the Inspector has *not* been recognized as discriminatory or unduly restricting the freedom of expression on the basis of sexual orientation by any court or other state authority.

28. The Inspector of Journalist Ethics also applies the criteria regarding the restriction of the freedom of expression in investigating the cases of incitement of hostility (hatred, discrimination, abuse) in public information. According to Article 25 of the Constitution of the Republic of Lithuania, national, racial, religious or social hatred are criminal actions incompatible with the freedom of expression. Although in 2013-2015 (data of 10 November 2015) fewer cases of incitement of hostility were identified than in 2010-2012, however, the data confirm the same trend that the hate speech is most frequently addressed towards the persons on the basis of their sexual orientation. For example, in 2015 there were 87 (out of 247) cases or 36% of all cases of hate speech against the persons on the basis of their sexual orientation.

29. During the period in question, at the request of the pre-trial investigation officers 251 expert examinations of the content of the public information were carried out by the Office of the Inspector of Journalist Ethics concerning incitement of hostility (123 in 2013; 46 in 2014, 82 – in 2015). *Incitement of hostility (hatred, discrimination)* on grounds of sexual orientation was identified in 87 examined cases (50 in 2013, 15 in 2014, 22 in 2015), *abuse (stigmatization, insult)* on grounds of sexual orientation was identified in 211 examined cases (140 in 2013; 23 in 2014, 48 in 2015), and *instigation to violence (physical violence)* on grounds of sexual orientation was identified in 84 examined cases (50 in 2013, 15 in 2014, 19 in 2015).

30. In order to combat any manifestations of hatred in public information (without identifying any specific basis for hatred) in 2014 the Office of the Inspector of Journalist Ethics actively participated in the training organised by the international journalist community — the non-governmental organisation *Media4change* — for regional media representatives, which focused on how to recognize hate speech and to avoid it in journalist practice. An expert of the Office of the Inspector of Journalist Ethics participated in seven training sessions (four academic hours each) on the subject "*Hate speech in the lips of the media: incitement or ..ot?*". In 2014, training for the representatives of the Lithuanian Union of Journalists "*Journalist ethics and media law: is competition for ethical journalism possible?*", in which recommendations were provided to journalists as to how not to disseminate hate speech when reporting about events or quoting sources of information and how to properly respond to hate speech. At the scientific conference on 10 December 2014 at Vytautas Magnus University ("*Hatred online as a challenge for the guarantee of human rights and freedoms: theory and practice*"), the presentation "*Hate speech in public texts: between opinion and abuse*" analysed the relationship between expression of hate speech and opinion. Furthermore, as a result of cooperation between the Inspector of Journalist Ethics and Utena Police Headquarters, on 11 September 2014 training (4 academic hours) was organised for police officers of police headquarters of Anykščiai, Ignalina, Molėtai, Visaginas and Zarasai. It was a practical seminar "*Informing the public as part of police activities: between the obligation to inform and human rights protection*". Issues on the research of incitement to hatred online were also discussed during the training.

Paragraph 9: [B2]: While the Committee welcomes the ongoing investigations on the involvement of Lithuanian officials and state authorities in the rendition, secret detention, torture, inhuman and degrading treatment of Mustafa Ahmed al-Hawasawi, the Committee requires updated information on the findings of such investigation and, if appropriate, sanctions for those responsible. The Committee also requires information on additional investigations that have been conducted into allegations of the State's complicity in human rights violations as a result of counter-terrorism measures.

31. On 13 February 2014 the Prosecutor General's Office of the Republic of Lithuania launched a pre-trial investigation No. 01-2-00015-14 on the basis of the elements of criminal offence defined by Article 292 paragraph 3 of the Criminal Code of the Republic of Lithuania, i.e. possibly unlawful transportation of persons across the state border. The factual circumstances of this pre-trial investigation are related with the issues of possible transportation and confinement of persons detained by the United States Central Intelligence Agency (hereinafter referred to as the "US CIA") on the territory of the Republic of Lithuania.

32. The investigation was launched on the basis of the complaint received from C. Fersman, Director of the non-governmental organization REDRES, and N. Bitiukova, authorized representative of the Human Rights Monitoring Institute. The complaint and the material, which was provided to the Prosecutor General's Office, claimed commencement of a pre-trial investigation regarding the participation of officers and state authorities of the Republic of Lithuania during the transfer, secret detention, torturing and inhuman and degrading treatment of the national of Saudi Arabia Mr. Mustafa Ahmed al-Hawsawi, who, according to the applicants, is facing trial by the US Military Commission in Guantanamo (Cuba) regarding the terrorist attacks committed in the USA on 11 September 2001. The complaint states the following: "<...> it is highly probable that al-Hawsawi was one of the detained persons confined in Lithuania between March 2004 and 4 September 2006, when it was recognized that he was detained in a prison situated in the Guantanamo Bay base".

33. When by its Resolution of 19 January 2010 the Seimas of the Republic of Lithuania approved the Findings of the Parliamentary Investigation by the Seimas Committee on National Security and Defence concerning the Alleged Transportation and Confinement of Persons Detained by the Central Intelligence Agency of the United States of America on the Territory of the Republic of Lithuania (hereinafter referred to as the "Findings") and in order to investigate the circumstances stated in the Findings, on 22 January 2010 the Organized Crime and Corruption Investigation Department of the Prosecutor General's Office of the Republic of Lithuania launched a pre-trial investigation regarding the abuse of office as provided for in Article 228 paragraph 1 of the Criminal Code of the Republic of Lithuania. In the course of the pre-trial investigation the persons related with the subject of the investigation and holding the data significant for the successful investigation of the case were interrogated, the important documents and other information were collected, the necessary and then possible procedural acts significant for the pre-trial investigation were performed. By the decision passed on 14 January 2014 the Prosecutor of the Organized Crime and Corruption Investigation Department terminated the pre-trial investigation No. 01-2-00016-10 having recognized that there are no elements of a crime or misdemeanour in the act.

34. Having taken into consideration the contents of information presented in the censored US Senate Report released on 9 December 2014, certain concurrences of the said censored Report with the data presented in the Findings of the Parliamentary Investigation by the Seimas Committee on National Security and Defence and the links with the subject of the pre-trial investigation No. 01-2-00016-10, by the decision passed on 22 January 2015 Chief Prosecutor of the Organized Crime and Corruption Investigation Department revoked the decision passed on 14 January 2014 by the Prosecutor of the Organized Crime and Corruption Investigation Department on the termination of the pre-trial investigation No. 01-2-00016-10 instituted on the basis of Article 228 paragraph 1 of the Criminal Code of the Republic of Lithuania regarding the abuse of office, and reopened the said investigation. Based on the factual data collected and procedural acts performed in the course of the pre-trial investigation No. 01-2-00015-14 and No. 01-2-00016-10, the nature and significance of the alleged criminal offences which are the subject of the investigations, and in order to conduct a thorough investigation of the alleged criminal offences and apply the measures, which ensure performance of the pre-trial investigation within the shortest

possible period of time, a decision on the joinder of the pre-trial investigations No. 01-2-00015-14 and No. 01-2-00016-10 into one pre-trial investigation No. 01-2-00015-14 was passed on 6 February 2015. The said pre-trial investigation is ongoing and is conducted by a group of prosecutors. If sufficient factual data are collected, other significant circumstances emerge or other alleged criminal offences are detected in the course of the criminal proceedings, the scope of the pre-trial investigation may be extended. The norms of criminal procedure, which apply to the current pre-trial investigation, do not limit the scope of the investigation. If the elements of any other alleged criminal offences are detected, their investigation within the said pre-trial investigation shall be commenced and conducted on the basis of other norms of the Criminal Code of the Republic of Lithuania.

35. Pursuant to Article 177 paragraph 1 of the Code of Criminal Procedure of the Republic of Lithuania, information about a pre-trial investigation is not made public. It may be made public before the hearing of the case in court only subject to a prosecutor's permission and only to such an extent as is determined as permissible. With reference to the fact that the European Court of Human Rights (hereinafter referred to as the "ECHR") is currently hearing the case of *Abu Zubaydah v. Lithuania*, the specificity of the mechanism of the Convention, the specific character of the judicial proceedings conducted by the ECHR and a possibility to apply to certain materials of the case the Rules of the European Court of Human Rights, in particular, Rule 33 paragraph 2, which restricts public access to such materials, the Prosecutor General's Office did not see any possibilities under the national legal provisions and the ongoing pre-trial investigation to refuse to provide the information requested by the ECHR. The Prosecutor General's Office submitted the material of the pre-trial investigation, except those documents, which are classified, to the representative of the Government of the Republic of Lithuania at the ECHR by claiming to apply Rule 33 paragraph 2 of the Rules of the European Court of Human Rights. Since the material of the pre-trial investigation contains information, which has been recognized as the state or official secret in the procedure provided by laws, the detailed information about the progress and results of the pre-trial investigation No. 01-2-00015-14 may not be provided and made public (Article 177 of the Code of Criminal Procedure of the Republic of Lithuania).

Paragraph 12 (i) [B1]: Regarding administrative detention, the recommendation has not yet been implemented. The Committee requires updated information on the draft law on Code of Administrative Offenses.

36. On 25 June 2015, the Code of Administrative Offenses of the Republic of Lithuania regulating the administrative liability of natural persons was adopted. The Code does not provide for administrative detention as an administrative penalty. The code will enter into force as of 1 April 2016, while the old Code of Administrative Offenses of the Republic of Lithuania with all its amendments will expire.

(ii) [B2]: The Committee welcomes the information provided by the State party on measures in place on the criteria for eligibility for the release on parole but requires information on measure to implement other alternatives to imprisonment, such as community service, mediation and suspended sentences.

37. The Criminal Code of the Republic of Lithuania (hereinafter – CC) provides sufficient opportunities to differentiate criminal liability and to impose non-custodial penalties or other sanctions. Articles 36-40 of the CC set out grounds and conditions for the exemption from criminal liability and imposing penal sanctions specified in Article 67 of the CC instead (1) prohibition to exercise a special right; (2) deprivation of public rights; (3) deprivation of the right to be employed in a certain position or to engage in a certain type of activities; (4) compensation for or elimination of property damage; (5) unpaid work; (6) payment of a contribution to the fund of crime victims; (7) confiscation of property; (8) obligation to reside separately and/or prohibition to approach the victim;

(9) participation in the programmes addressing violent behavior; (10) extended confiscation of property).

38. Of these, Article 38 of the CC is often applied which stipulates reconciliation between the offender and the victim. Article 42 lists types of penalties, which, among other things, include such non-custodial penalties as community service, fines, and restrictions of liberties. In addition, together with the penalty, certain penal sanctions specified in Article 67 of the CC may be imposed.

39. It should be noted that Article 62 of the CC establishes the grounds for imposition of a more lenient penalty than provided for by a law; furthermore, according to Article 54(3) of the CC, the court may always impose a more lenient penalty, if the imposition of the penalty provided for in the sanction of an article is evidently in contravention to the principle of justice.

40. We would also like to inform you that pursuant to Order No. XII-155 of 19 March 2015, the Seimas of the Republic of Lithuania adopted amendments to Article 75 of the CC providing for a possibility to apply suspension of sentence for the offenders who have been sentenced for a term not exceeding four years for one or several premeditated crimes (except for very serious crimes). It is expected that the amendments would significantly contribute to less frequent imposition of real custodial penalties. In addition, pursuant to Order No. XII-1818 of 23 June 2015, the Seimas of the Republic of Lithuania amended Article 157 of the Code of Enforcement of Penal Sanctions, in which it sets out clearer rules for conditional release from a correctional institution, and thus creating further premises for more frequent application of conditional release.